

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C. 20554

ORIGINAL
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Charlotte Amalie, Virgin Islands))

MM DOCKET NO. 92-244
RM-8027

ORIGINAL
FILE

To: Chief, Allocations Branch

COMMENTS

Virgin Islands Stereo Communications ("VISC"), by its attorneys, hereby opposes the allotment of FM Channel 267B to Charlotte Amalie, Virgin Islands, in lieu of Channel 246B. Notice of Proposed Rule Making, DA 92-1370, released November 10, 1992. The proposed allotment is fundamentally flawed, and should be rejected.

I. The Proposed Allotment Would Not Provide a 70 dBu Signal to the Proposed City of License.

The coordinates proposed for the Channel 267B allotment are 18° 20' 30" North Latitude, 64° 43' 59" West Longitude. This transmitter site is located on the island of St. John, slightly more than twenty kilometers east of Charlotte Amalie. Charlotte Amalie, however, is sheltered by mountains which completely block the possibility of any line of sight transmission from the St. John tower site to Charlotte Amalie. Thus, the proposed alloca-

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tion cannot possibly comply with the line of sight requirement of Section 73.315(b) of the Commission's Rules. Exhibit A attached hereto is a set of terrain profiles which demonstrate the extreme shadowing that would result. Under these circumstances, the allotment of Channel 267B to Charlotte Amalie is inappropriate.

As reflected in the Notice, the proposed allotment requires a 20.8 kilometer site restriction to the east of Charlotte Amalie. Because of the mountainous terrain on the island of St. Thomas, where Charlotte Amalie is located, no station located that far east of Charlotte Amalie can place a 70 dBu signal into Charlotte Amalie due to extreme and complete terrain shielding. Channel 267B therefore does not satisfy the Commission's basic requirements for channel allotment. This is not merely a question of the specific site proposed by the petitioner. There is no site in the area east of the restriction boundary which would provide a shadow-free city grade signal to the community of license. See, e.g., FM Channel Assignments (Attica, NY), 54 FCC 2d 1137, 34 RR 2d 1275, 1278 (1975); FM Channel Assignments (Wadley, AL), 60 RR 2d 1462, 1464 (MMB 1986); FM Channel Assignments (New Boston, OH), 48 RR 2d 1628, 1632-33 (BB 1981).

**II. The Proposed Allotment is, in Essence,
a Non-Adjacent Channel Upgrade.**

Calypso Communications, the petitioner, complains that the use of its present Channel 246B would result in harmful interference with an existing station on Channel 247 in Tortola, British Virgin Islands, just a few miles from the authorized site of

petitioner's unbuilt station WVNK. However, Calypso took its grant on Channel 246B with full knowledge of the Tortola problem. Indeed, that was no doubt the reason that no other applications were filed for Channel 246B.¹

If the Commission does, inadvisedly, allot Channel 267B to Charlotte Amalie, it should open that channel for the filing of applications by other interested parties. This situation is analogous to a case where a full power frequency is allotted to a community for the first time. The mere fact that no other parties applied for Channel 246B does not mean that there would not be substantial interest in the use of Channel 267B. Assuming arguendo that the Commission were willing to disregard the requirement for provision of a 70 dBu signal to Charlotte Amalie, or that a way could be shown for that requirement to be satisfied, Virgin Islands Stereo Communications, for one, would be interested in filing an application for Channel 267B.

III. The Allotment of an Additional FM Channel is Detrimental to the Public Service Efforts of Operating Stations in the Virgin Islands.

VISC presently operates FM Station WVIS at Frederiksted, on the island of St. Croix in the Virgin Islands. Because of the limited economic base in the islands, as compared with the large

¹ Had it not been for the fact that Calypso's application was the only one submitted during the filing window for Channel 246, it would not have been permitted to amend out of a tenderability defect relating to multiple ownership in its original application. See Letter to Joseph Bahr, 8920-RMK, 25 June 1991 (File No. BPH-870707MI). Without that special exemption, the application would have been returned.

number of stations which operate there, WVIS is barely able to meet its basic operating expenses. Introduction of an additional signal in the Virgin Islands would result in a further fractionalization of advertising revenues such that the present efforts of WVIS to address local community concerns would be seriously impaired. Moreover, the financial base for the new station on Channel 267B would be so limited that only an existing station could possibly support that operation.² Thus, the proposal of an additional allotment in the Virgin Islands is best deferred until such time as the new Chairman and other members of the Commission have had the opportunity to assess whether the problems engendered by nationwide FM station proliferation require a new set of channel allotment policies.

IV. Conclusion

In sum, Calypso was the only applicant for Channel 246 at Charlotte Amalie solely because of the technical defects in that allotment. Since unbuilt WVNK owes its sole existence to that flaw, it should not be allowed to use that problem to bootstrap

² In this regard, it is noteworthy that Calypso is under substantial common ownership with FM Station WJKC, Christiansted, Virgin Islands. In Calypso's construction permit application, as amended, it promised that Jonathan Cohen and Robert Miller (the two principals who have ownership interests in WJKC) would divest all interest in that station and terminate their employment with it upon a grant of the Calypso application. Notwithstanding the grant of the Calypso application over a year and a half ago, there is no indication that Calypso has complied with the divestiture promise on which its grant (indeed, even the tenderability of its application) was premised.

itself into an FM channel which is free from that problem, albeit one saddled with a critical city contour defect.

The removal of numerous restrictions as to the location of station studios and other elements of community service mean that the Commission must be more vigilant than ever in enforcing the requirement that an FM licensee deliver at least a 70 dBu signal to the city of license. All other considerations aside, Calypso's patent inability to show that Channel 267B can be used to cover Charlotte Amalie with the minimum signal compels the denial of Calypso's request.

In view of the foregoing, the Commission should deny the proposed allotment of Channel 267B to Charlotte Amalie.

Respectfully submitted,

VIRGIN ISLANDS STEREO COMMUNICATIONS

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January 4, 1993

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Terrain Profile(s) - DMA 3-Second Database

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Job title: ST. JOHN TO ST. THOMAS

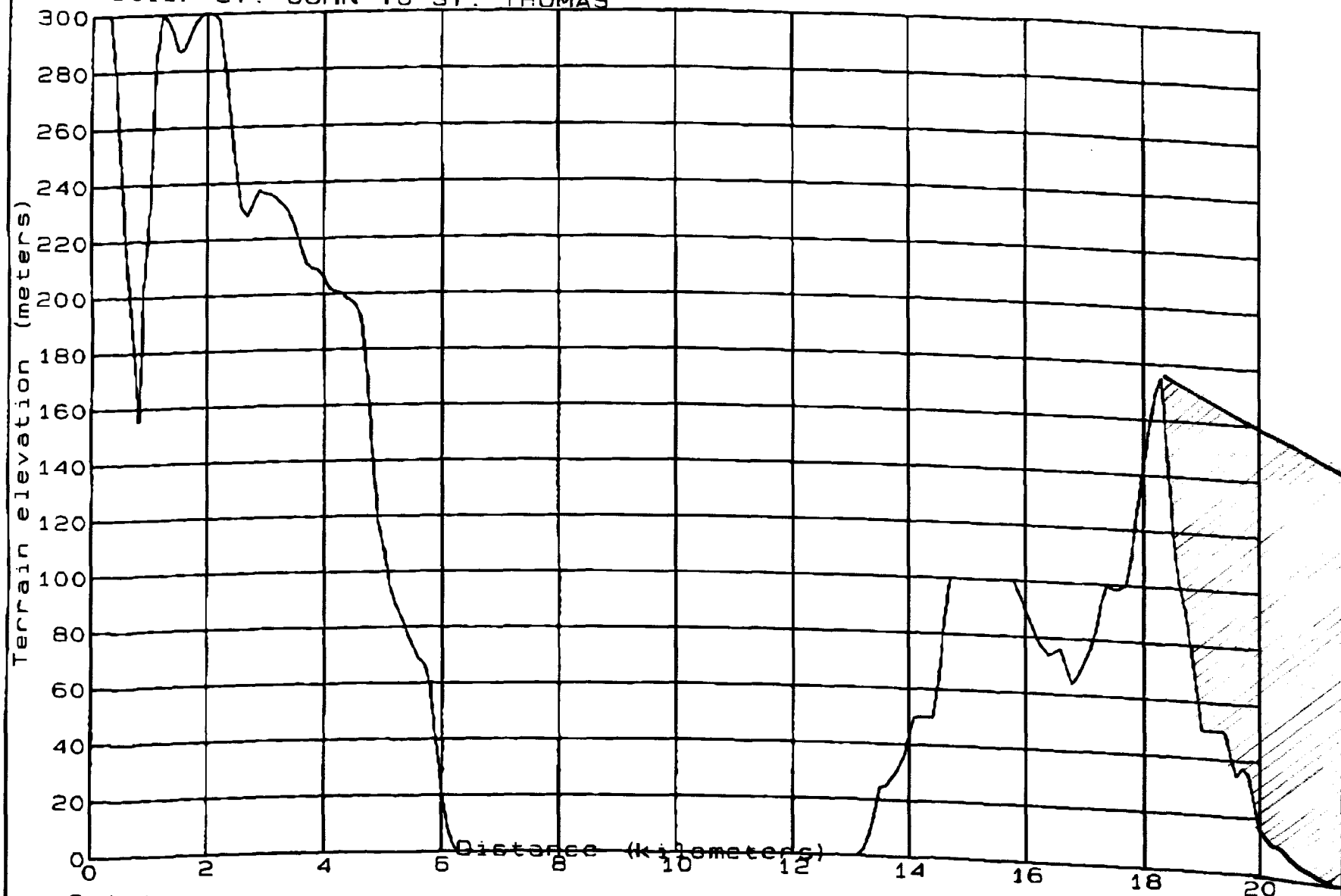
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Distance between elevation samples: .10000 km

Profile plots will be generated automatically at DATAWORLD.

Radial number	Latitude	Longitude	Distance (km)	Bearing (degrees)
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2	18-20-35	64-55-21	20.0	270.5
3	18-20-41	64-55-21	20.0	271.0

Terrain profile from DMA 3-second database
Produced by DATAWORLD for JOSEPH BAHR
Title: ST. JOHN TO ST. THOMAS



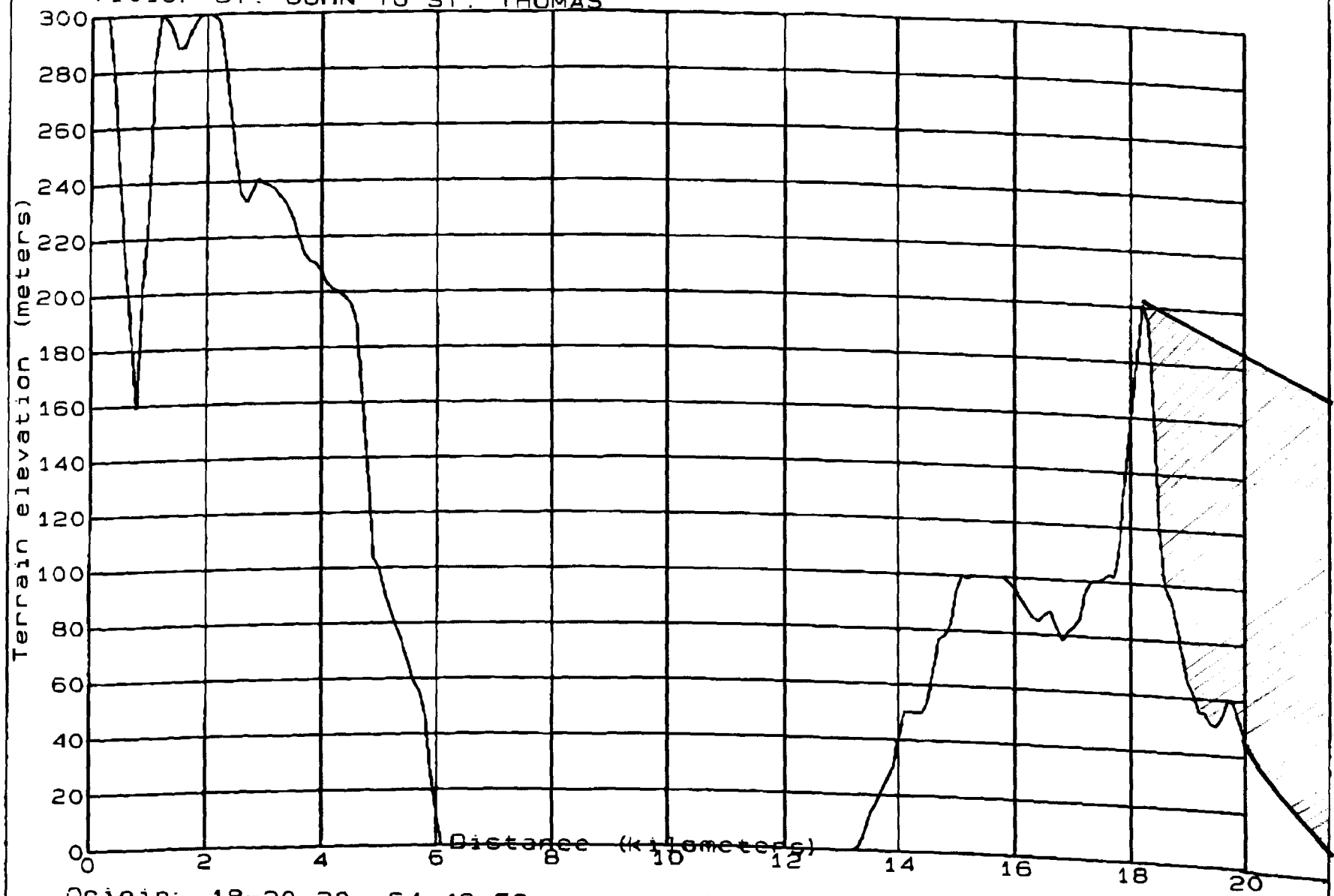
Origin: 18-20-30 64-43-59
Terminus: 18-20-30 64-55-21

Path Length: 20.0 km
Bearing: 270.0 Degrees true

Charlotte
Amalie

DATAWORLD 04 JAN 04 '93 02:01PM
2 301 656 5341
01/04/93 14:03

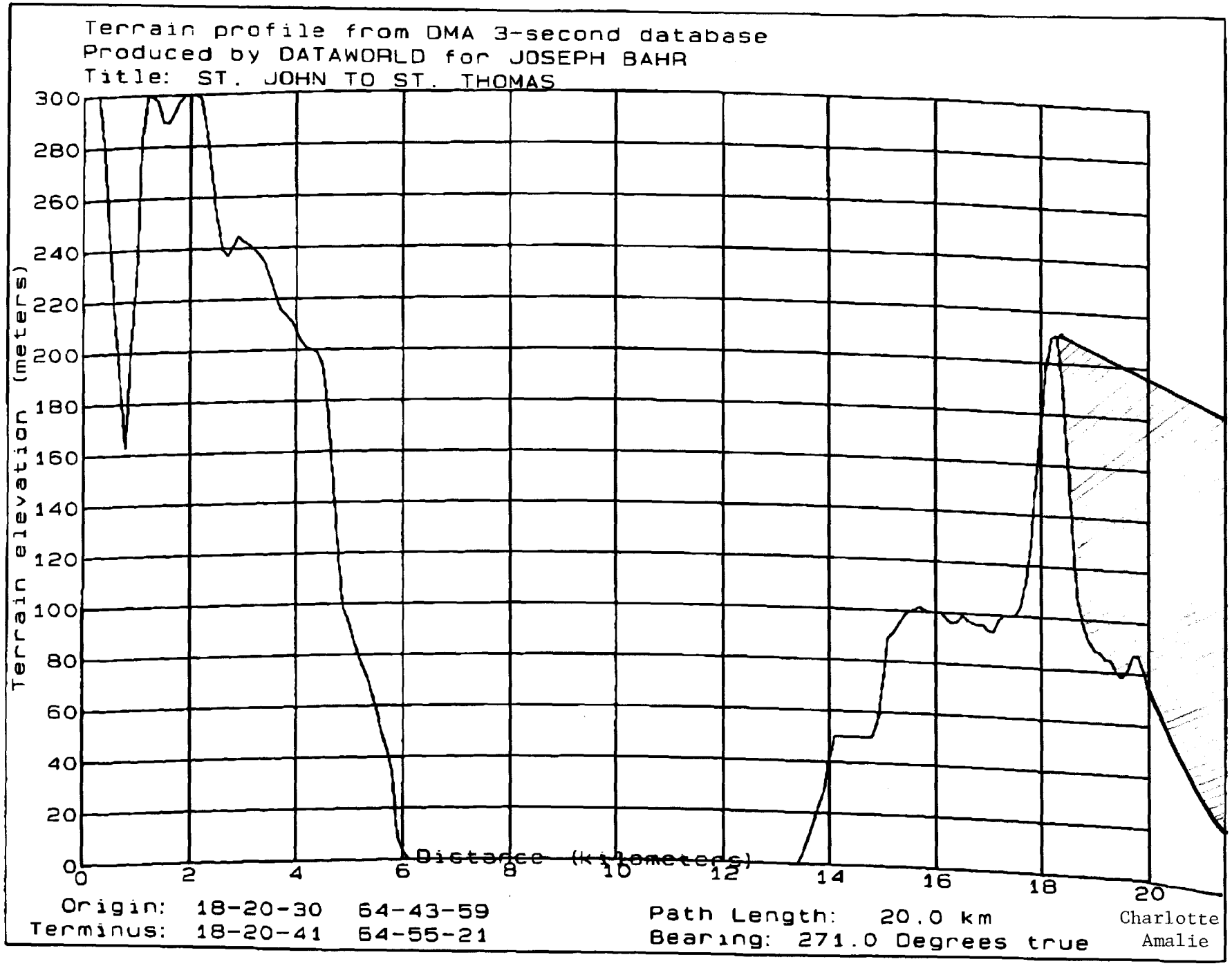
Terrain profile from DMA 3-second database
Produced by DATAWORLD for JOSEPH BAHR
Title: ST. JOHN TO ST. THOMAS



Origin: 18-20-30 64-43-59
Terminus: 18-20-35 64-55-21

Path Length: 20.0 km
Bearing: 270.5 Degrees true

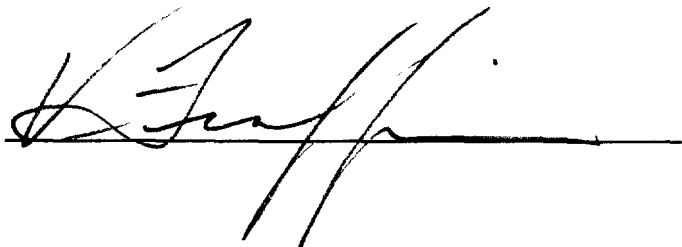
Charlotte
Amalie



CERTIFICATE OF SERVICE

I, V. Frappier, hereby certify that I have, this 4th day of January, 1993, caused to be sent by U.S. first-class mail, postage-prepaid, a true and correct copy of the foregoing "Comments" to the following:

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Counsel for Calypso Communications

A handwritten signature in dark ink, appearing to read "V. Frappier", is written over a horizontal line.